

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

EPA Region 5 Records Ctr.



274488

THE DOW CHEMICAL CO., et al.,

Plaintiffs,

v.

ACME WRECKING CO., INC., et al.,

Defendants.

Civil Action Nos.
C-1-97-0307; C-1-97-0308
(Consolidated Actions)

C-1-01-439
(Transferred Action)

THE DOW CHEMICAL CO., et al.

Plaintiffs,

v.

SUN OIL COMPANY, d/b/a SUNOCO
OIL CORP., et al.

Defendants.

Judge Weber

UNITED STATES OF AMERICA,

Plaintiff,

v.

AERONCA, INC., et al.

Defendants.

**UNITED STATES' FIRST REQUEST FOR ADMISSIONS,
SECOND SET OF INTERROGATORIES AND
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO CLARKE SERVICES, INC.**

Pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff, the
United States of America, requests that Defendant Clarke Services, Inc. ("Clarke Services"):

(1) admit or answer the following requests for admission within forty-five days, as provided for in the First Case Management Order (“First CMO”) entered in the above-captioned action;

(2) answer fully, in writing and under oath, each of the following interrogatories, and serve such answers on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO; and (3) produce the documents requested below, or in lieu thereof serve authentic copies of such documents on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO.

CRITICAL INSTRUCTION TO CLARKE SERVICES

This discovery request is directed to Clarke Services. According to documents both in the public record and in the custody of U.S. EPA, Clarke Services first was incorporated in 1967. However, it is the United States’ understanding, and allegation, that Clarke Services did not start from “scratch” in 1967. Rather, Clarke Services was the incorporated name of a business, or several businesses, that Thomas Clarke had started some years before. Two of the names that the predecessor businesses had or may have had were Clarke Sanitary Fill and Clarke’s Complete Collection. **Because the United States alleges that Clarke Services is the successor to the liability of Clarke Sanitary Fill, Clarke’s Complete Collection, and possibly other “d/b/a” businesses, the respondent to this request is obligated to provide answers to the questions set forth below -- to the extent of its knowledge -- for Clarke Sanitary Fill, Clarke’s Complete Collection, and any other possible predecessor company to Clarke Services.** While the United States understands that Clarke Services may deny successor liability, the United States is entitled to seek discovery on this issue, and expects Clarke Services to provide information on all possible predecessor businesses. **Note that the definition of “Clarke Services” is very broad: it includes “Clarke Sanitary Fill, Clarke’s Complete Collection and each merged, consolidated, and acquired predecessor or successor (including sole**

proprietorships), parent, subsidiary, division, and affiliate, each past and present officer, director, employee, agent, servant, and representative of each such entity or individual, and each past and present attorney of each such entity or individual.”

Additionally, because Clarke Services was incorporated from at least 1967 through 1984 (when dissolution papers were filed), Clarke Services must answer the questions set forth below for the entire period of its incorporation. Indeed, the “Applicable Time Frame” for this request is from January 1, 1955 to the present. Thus, to the extent that Clarke Services had successor businesses after its alleged dissolution in 1984, Clarke Services is obligated to answer the requests set forth below for those successor businesses as well.

To the extent that Clarke Services has any questions about the scope of these requests, counsel for Clarke Services is encouraged to contact counsel for the United States, who will be happy to clarify.

INSTRUCTIONS

A. As to the Interrogatories and Document Requests, the United States incorporates by reference the instructions set forth in the United States’ First Set of Interrogatories and First Request for Production of Documents to Clarke Services, Inc.

B. Clarke Services shall specifically admit or deny each Request for Admission.

C. The answer to any Request for Admission shall fairly meet the substance of the requested admission.

D. When good faith requires that Clarke Services qualify its answer or deny only a part of the matter for which an admission is requested, Clarke Services must specify the portions of the Request to which it admits and then deny or qualify its answer as to the remainder. Wherever a denial or partial denial is made, Clarke Services shall state each and every fact that forms the basis for the denial or partial denial, and shall identify all documents that support or tend to refute its denial or partial denial.

E. Clarke Services shall not give lack of information or knowledge as a reason for failure to admit or deny, unless Clarke Services indicates that it has made a reasonable inquiry and indicates that the information known or readily obtainable by Clarke Services is insufficient to enable it to admit or deny the matter for which an admission is requested.

F. Clarke Services may not object to a Request for Admission for solely on the ground that the matter inquired into presents a genuine issue for trial.

G. Where Clarke Services interposes an objection to any of the following Requests for Admission, the objection shall state with specificity all bases and grounds for the objection.

H. If, in responding to any of these Requests for Admissions, Clarke Services encounters any ambiguity in construing either the Request, a definition, or an instruction, state with specificity the matter deemed ambiguous and identify the construction chosen or used in responding to the Request.

I. These Requests include Requests for Admission of the authenticity of various documents. Following some of these Requests, the United States has placed the batestamped identification number. These batestamps are provided for the convenience of Clarke Services, and do not constitute any portion of the Request for Admission that precedes them. An inaccurate citation shall not constitute sufficient good faith cause for denial. Additionally, these Requests do not seek admissions regarding the batestamp, but pertain solely to the document to which the batestamp is affixed.

DEFINITIONS

A. The United States incorporates by reference the definitions set forth in the United States' First Set of Interrogatories and First Request for Production of Documents to Clarke Services, Inc.

RULES OF CONSTRUCTION

A. "And/Or." The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

B. Singular/Plural. The plural of a word shall include the singular and the singular of a word shall include the plural.

C. Verb Tense. The past tense of a verb shall include the present tense and the present tense of a verb shall include the past tense.

REQUESTS FOR ADMISSIONS

1. Admit that Clarke Services is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

2. Admit that the Skinner Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. Admit that there has been a “release,” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) of “hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Skinner Site.

4. Admit that the continued threat of a release of hazardous substances into the environment exists at and/or near the Skinner Site.

5. Admit that the United States has taken actions in response to the release and/or threat of release of hazardous substances at the Skinner Site.

6. Admit that the United States’ actions concerning the Skinner Site constitute “response” actions, within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

7. Admit that the United States has incurred response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

8. Admit that the United States continues to incur response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

9. Admit that cyanide is a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

11. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is a business record within the meaning of Rule 803(6) of the Federal Rules of Evidence.

12. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this litigation (batestamped 000016-000087) is admissible into evidence for use in this litigation.

13. Admit that each copy of each document that Clarke Services produced to the United States pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and pursuant to the United States’ discovery requests in this action is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

14. Admit that each of the following documents is an admission of Clarke Services within the meaning of Rule 801(d)(2) of the Federal Rules of Evidence:

- (1) the Agreement dated February 1980 in which Thomas and Margaret Clarke sold a total of 53 shares to Clarke Services (batestamped 001853—001858);
- (2) the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and Browning-Ferris Industries of Ohio, Inc. (“BFI-OH”) (batestamped 001859-001869); and
- (3) the Noncompete Agreement dated March 1, 1984, entered into by “Dick Clarke” (batestamped 001850-001852).

15. Admit that each of the three documents referenced in Request for Admission 14 is admissible into evidence for use in this litigation.

16. Admit that pursuant to the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869), Clarke Services did not sell the land at 9740 Cincinnati-Dayton Road, West Chester, Ohio, to BFI-OH.

17. Admit that pursuant to the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869), BFI-OH did not assume the liabilities of Clarke Services.

18. Admit that Richard M. Clarke was the beneficiary and/or distributee of the proceeds of the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869).

19. Admit that Clarke Services was engaged in the collection, recovery, processing, recycling, or disposal of rubbish or garbage.

20. Admit that Clarke Services was engaged in the collection, recovery, processing, recycling, or disposal of chemical wastes.

21. Admit that Clarke Services was engaged in the collection, recovery, processing, recycling, or disposal of liquid wastes.

22. Admit that Clarke Services was engaged in the removal, cleaning or replacement of processing catalysts for industrial process equipment.

23. Admit that Clarke Services was engaged chemical and high-pressure water cleaning of industrial process equipment.

24. Admit that Clarke Services was engaged in formulating or marketing special purpose cleaning chemicals.

25. Admit that Clarke Services was engaged in the collection, recovery, processing, recycling or disposal of paper waste or textile waste.

INTERROGATORIES

1. Identify all customers of Clarke Services. To the extent that you cannot recall all customers, identify as many as you can.

2. Describe with particularity the persons who received any distributions from the proceeds of the dissolution of Clarke Services, and for each such person, state the date(s) of the distribution, the type of distribution (money, stock, etc), the monetary value of the distribution, and the basis for your estimate of the monetary value of the distribution if the distribution was

something other than money. If there was no distribution, explain what happened to the assets of Clarke Services when Clarke Services filed its certificate of dissolution in 1984 (batestamped 001843).

3. Identify the person(s) who are listed as the record owners of the property at 9740 Cincinnati-Dayton Road, West Chester, Ohio, from 1970 to the present.

4. Identify the person(s) who are listed as the record owners of the property at 2040 East Kemper Road, Sharonville, Ohio, from 1955 to the present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each document that is identified, referred to or used in any way in responding to the United States' Second Set of Interrogatories to Clarke Services.

2. Each document that identifies any customer of Clarke Services.

3. Each document that Clarke Services provided or should have provided to BFI-OH pursuant to Exhibit "B" of the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869). Specifically, Exhibit "B" indicates as follows:

Seller shall provide Buyer with all outstanding purchase orders, customer contracts and copies of ledger cards on the signing of this Assignment and Bill of Sale.

4. Titles and/or deeds relating to the property at 9740 Cincinnati-Dayton Road, West Chester, Ohio, from 1970 to the present.

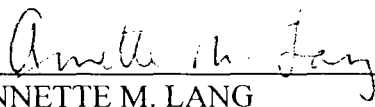
5. Titles and/or deeds relating to the property at 2040 East Kemper Road, Sharonville, Ohio, from 1955 to the present.

6. All documents relating in any way to the distribution of the assets of Clarke Services upon its dissolution.

7. All documents relating to any trusts involving the children of Thomas Clarke, Sr. and Margaret Clarke (including but not limited to the Clarke Family Trust).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2002, I caused a true copy of the foregoing **UNITED STATES' FIRST REQUEST FOR ADMISSIONS, SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO CLARKE SERVICES, INC.** to be served by first-class mail, postage prepaid upon the following counsel of record:

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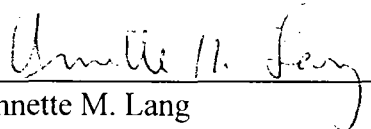
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